DEPARTMENT OF STATE REVENUE
REVENUE RULING IT 96-04
DECEMBER 5, 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Adjusted Gross Income Tax - Charitable Contributions made to Institutions of Higher Education Within Indiana
Authority: IC 6-3-3-5, Rule 45 IAC 3.1-1-79

The organization requests the Department to rule whether or not charitable contributions made to institutions of higher education within Indiana donated from an Individual Philanthropy Fund qualify for the Indiana college credit.

STATEMENT OF FACTS

The organization has instituted an Individual Philanthropy Fund that the organization is making available to donors making sizable gifts. The owner of each Fund has total control over the distribution of funds within their account. The donor/owner may distribute these funds to any 501(c)3 organization including Indiana institutions of higher learning. Upon the direction of the donor/owner payment of the donation is made by the organization on a Philanthropy Funds check which identifies the donor/owner or the donor/owner may notify the recipient of the donation by using an optional gift certificate. The donor/owner receives quarterly statements showing all distributions made from its Fund. The Individual Philanthropy Fund has no administrative fees.

DISCUSSION

IC 6-3-3-5, interpreted by Rule 45 IAC 3.1-1-79, provides that a taxpayer is eligible for a credit against the taxpayer's adjusted gross income tax or against gross income tax, if applicable, subject to limitations, imposed for a taxable year for certain charitable contributions made by a taxpayer. Rule 45 IAC 3.1-1-79 states that these charitable contributions must be made directly to institutions of higher education located within Indiana, to any corporation or foundation organized and operated solely for the benefit of such institution of higher education, or to the Associated Colleges of Indiana. In the instant case, the donor/owner maintains total control over the distribution of funds in its Individual Philanthropy Fund with the organization simply acting as an intermediary that administers the donor's/owner's Fund upon specific direction by the donor/owner. The charitable contributions made by the donor/owner from its Individual Philanthropy Fund, administered by the organization, are considered then to be "directly" made to institutions of higher education located within Indiana, hence, qualify for the Indiana college credit.

RULING

The Department rules that charitable contributions made by a donor/owner of an Individual Philanthropy Fund to institutions of higher education located within Indiana qualify for the Indiana college credit.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns or making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE

DEPARTMENT OF STATE REVENUE

REVENUE RULING ST 96-10

JANUARY 24, 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE: Application of Indiana sales/use tax to leases of railroad cars

RULING REQUESTED:

(1) Taxpayer requests Department rule on the taxability of its leases with out of state lessees, regardless of when those leases were executed or where the cars are or were delivered or used.

STATEMENT OF FACTS:

Taxpayer is a Delaware corporation with its principal executive and administrative offices in Chicago, Illinois. Taxpayer is primarily engaged in the business of leasing railroad tank cars and other "specialty" railroad cars (hereinafter generally referred to as "cars") to manufacturers and shippers of bulk liquid, compressed gas, and powdered or pelletized products. Generally, most of the cars that Taxpayer leases are manufactured by the Taxpayer at its manufacturing facility located in Indiana. Although the Taxpayer may sell railroad cars that it manufactures, its primary business is the leasing of cars. Taxpayer is an Indiana registered retail merchant.

Taxpayer's rental fleet consists of tens of thousands of cars leased to lessees throughout the United States, Canada and Mexico. The location from which the car is delivered to the lessee depends upon the availability of cars and the specific needs or requests of the lessee. For example, if a new car is leased to a lessee, the car is delivered from Taxpayer's manufacturing facility located in Indiana, or from one of its lining facilities located in Pennsylvania, Iowa, Louisiana or Georgia. On the other hand, if a used or existing car is leased to a lessee, the car may be delivered from one of taxpayer's storage areas or repair and maintenance facilities located throughout the United States or from some other location.

The leased cars are delivered by railroad to a location designated by the lessee. The lessee may, for example, request delivery to its headquarters, one of its plants, a railroad car manufacturer for installation of specialized equipment, or to another company's loading dock.

Leased cars are moved by railroads throughout the United States, Canada and Mexico. Taxpayer has no knowledge of the number of miles traveled or time spent in any state by a particular leased car. The rental terms are usually for an average of approximately ten (10) years, which mean that there are extended periods of time when Taxpayer has no knowledge of the number of miles traveled or time spent in each state by a specific leased car.

Taxpayer bills its lessees monthly under its lease. Taxpayer uses the billing addresses provided to it by its lessees. This address may or may not be the location to which the leased cars were delivered and the leased cars may or may not ever be used at the billing address. However, the billing address is easily ascertainable from Taxpayer's records.

DISCUSSION:

The Taxpayer's collection obligations may differ depending on whether the leases involve out-of-state lessees or in-state lessees.

Taxpayer believes that its car leases with out-of-state lessees, regardless of when those leases were executed or where the cars are or were delivered or used are not subject to the collection of Indiana sales/use tax. Taxpayer's leases are negotiated out of Indiana. Rail cars leased to out-of-state lessees are delivered by railroad to a location designated by the lessee. The lessee may request delivery to its headquarters, one of its plants, a railroad car manufacturer for installation of specialized equipment, or to another company's loading dock. The rail cars may be delivered from Taxpayer's manufacturing facilities in Indiana, Iowa, Pennsylvania, Louisiana or Georgia.

Under IC 6-2.5-4-10(a), the leasing of tangible personal property is a retail transaction. Therefore, the transaction is subject to tax if the tangible personal property is used in Indiana. Under IC 6-2.5-3-1(a), "use" means the exercise of any right over tangible personal property. The basing of the rail cars in Indiana would be a taxable use. However, the Taxpayer states that its lessees do not specifically notify it where the rail cars will be based.

Taxpayer also leases rail cars to Indiana lessees. It has a railroad car manufacturing facility in Indiana and is registered to collect Indiana sales/use tax. IC 6-2.5-3-7 sets up a rebuttable presumption that tangible personal property delivered in Indiana is acquired for use in Indiana. However, Taxpayer would not be required to collect Indiana sales/use tax on the lease if the lessee presents it with a valid exemption certificate under IC 6-2.5-8-5 or a direct-pay permit under IC 6-2.5-8-9. In any event, if the rail car is delivered outside Indiana and the lease is subject to a similar tax in another state, the lessee is entitled to a credit under IC 6-2.5-3-5.

Because the Taxpayer's lessees do not specifically notify it where the rail cars are based, it is requesting to be allowed to report sales/use tax on the basis of the "bill-to address." Indiana sales/use tax law does not address this particular issue; however, the Department has, in the case of telecommunications companies, followed the Multistate Tax Commission's Uniform Principles Governing State Transactional Taxation of Telecommunications, which provides that in the case of mobile telephones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the telephone number, authorization code, or location in this state where the bills are sent. (emphasis added). As a general rule, the state of the owner's domicile has the power to tax mobile tangible personal property unless the taxpayer proves that an actual situs has been established in another state. Central R. Co. of Pa. v. Pennsylvania, 82 U.S. Ct. 1297 (1962). Because of the complexities of taxing mobile tangible personal property, the Department will allow the Taxpayer, for purposes of its collection obligation, to report sales/use tax on its rail car leases by using the "bill-to address" to determine whether the lessee is an Indiana lessee or an out-of-state lessee.

RULING

The Department rules that Taxpayer is not required to collect Indiana sales/use tax on its car leases with out-of-state lessees, provided the Taxpayer is not specifically notified by the lessee that the rail cars are based in Indiana. The Department rules that Indiana sales/use tax is due on all leases with Indiana lessees, unless the Taxpayer obtains either a properly-executed exemption certificate or direct-pay permit from its lessee. Indiana will allow a credit to the lessee as provided by statute for any tax paid to another state on the lease of the rail car. The Department rules that a lessee will be considered to be an "out-of-state lessee", for purposes of the Taxpayer's collection obligation only, if Taxpayer uses an out-of-state billing address for that lessee. Conversely, a lessee will be considered an "Indiana lessee," if Taxpayer uses an Indiana billing address for that lessee.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situation may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE